Supreme Court, U. S.
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No. 77-1577

In the Supreme Court of the United States

OCTOBER TERM, 1977

JAMES H. WILLIAMS, PETITIONER

v.

W. GRAHAM CLAYTOR, JR.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that the district court abused its discretion in granting the motion to dismiss petitioner's suit for lack of prosecution.

1. Petitioner, a GS-14 employee of the Navy Department, pursued his complaint of employment discrimination[1] through the administrative process and then brought this suit *pro se* in the United States District Court for the District of Columbia. He retained and changed counsel three times in that court and represented himself during two other periods (Pet. 3-13; Pet. App. 1a).

Fifteen months after petitioner filed his complaint, the district court granted the motion to dismiss with prejudice. The court considered the entire procedural

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[1]Petitioner's complaint alleged that the Department had denied him the opportunity to perform the duties of his position, had denied him adequate staff, and that his position should have been classified GS-15 (Pet. 4).

history of the case and found (Pet. App. 1a-3a), *inter alia*, that "[petitioner] and his attorneys have made repeated attempts to thwart and delay all of the defendant's discovery efforts"; that "[t]he only discovery sought by [petitioner] was filed approximately 30 days before the close of all discovery, a date set months in advance by Order of this Court"; that "[petitioner's] counsel has been on notice that all delays at this stage are extremely prejudicial to [respondent]"; that "[d]espite repeated notice * * *, [petitioner] has repeatedly failed or refused to properly serve [documents on] counsel for [respondent]"; and that "[a]fter proper notice from the Court to both [petitioner] and his counsel, neither * * * appeared at a scheduled pretrial conference * * *." The court of appeals affirmed, holding that the district court had not abused its discretion (*id.* at 5a-6a).

2. The decision of the court of appeals is correct, and review by this Court is unwarranted. The district court acted in accord with its power under Fed. R. Civ. P. 41(b), and Rules 1-14 and 1-15(c) of the local rules of the United States District Court for the District of Columbia. See also *Sheaffer* v. *Warehouse Employees Union, Local No. 730*, 408 F. 2d 204 (C.A.D.C.), certiorari denied, 395 U.S. 934; *Bibeau* v. *Northeast Airlines, Inc.*, 429 F. 2d 212 (C.A.D.C.)[2].

Petitioner's argument (Pet. 14-17) that he should not be penalized for delays caused by his attorneys is answered by *Link* v. *Wabash Railroad Co.*, 370 U.S. 626, which held that, when a party chooses an attorney to be his

[2]Contrary to petitioner's suggestion (Pet. 16-17), those cases are not inconsistent with each other or the decision below. In *Sheaffer* the court of appeals affirmed a dismissal for want of prosecution; in *Bibeau*, the court reversed a dismissal because delay had not prejudiced the defendant, there was a record of substantial trial preparation, counsel had been ill, and there had been no notice of the date set for hearing.

representative, he is bound by the consequences of his freely-selected agent's acts or omissions. See also *National Hockey League* v. *Metropolitan Hockey Club, Inc.*, 427 U.S. 639. Moreover, the findings of the district court establish that petitioner himself was responsible in substantial part for the failure to prosecute.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1978.

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